

FOR REGISTRATION
Fredrick Smith
REGISTER OF DEEDS
Mecklenburg County, NC
2017 OCT 27 12:08:13 PM
BK:32227 PG:955-966
FEE:\$26.00
INSTRUMENT # 2017145844

PHETSL



2017145844

Prepared by and mail to:

K&L Gates LLP (EBR)
214 North Tryon Street, 47th Floor
Charlotte, North Carolina 28202

Returned to customer

**FIRST AMENDMENT TO
MASTER AGREEMENT
FOR SHARED FACILITIES
(Book 31142/Page 28)**

This First Amendment to Master Agreement for Shared Facilities (this "First Amendment") is made effective as of the 26th day of October, 2017 (the "Effective Date"), by and among Harris Teeter Properties, LLC, a North Carolina limited liability company ("HTP"), HT Fuel NC, LLC, a North Carolina limited liability company ("HT Fuel"), MT Island Promenade, LLC, a North Carolina limited liability company ("Developer") and Corning Optical Communications LLC, a North Carolina limited liability company ("Corning") and together with HTP, HT Fuel and Developer, the "Parties" and each a "Party").

WHEREAS, the Master Agreement for Shared Facilities dated September 2, 2016 (the "Master Agreement") is recorded in Book 31142, Page 28, Office of the Register of Deeds for Mecklenburg County, North Carolina (the "Registry");

WHEREAS, HTP and HT Fuel previously purchased portions of the Property;

WHEREAS, Corning has purchased the Office Parcel; and

WHEREAS, the Parties desire to amend the Master Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and terms contained herein, the Parties desire to amend the Master Agreement as set forth below, which amendment shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Party thereof.

1. Exhibits. Exhibit B and Exhibit C are hereby deleted from the Master Agreement and replaced with Exhibit B and Exhibit C attached hereto. For the avoidance of doubt, if there is additional office development at the Property, such development shall be included as part of either the Retail or Residential Parcel under the Master Agreement. Further, all roads shown as “Public Road” or “Road Right of Way” or similar designation on such exhibits shall be deemed to be Common Roads upon construction of the same until dedication and acceptance of the same by the City of Charlotte, at which point they shall become public roads.

2. Easement and Facility Modifications. Any material modification to the easements created or governed by the Master Agreement shall require the prior written consent of the Party impacted thereby. Any material modification to the Common Facilities, the Detention Facility, or the Common Roads shall require the prior written consent of the Parties necessary to amend or modify the Master Agreement, as more particularly set forth therein. A modification shall be deemed to be material if it (a) decreases utility capacity, (b) materially increases the cost associated with such item beyond what is approved by the Budget, (c) results in a service interruption to the subject Parcel, or (d) materially and adversely affects a Party’s ability to utilize the applicable item or rights associated therewith.

3. Construction Access. The Parties hereby agree that the use and easement over, under, through and across the Common Roads set forth in Section 2.1 of the Master Agreement, specifically includes the right of Corning, its contractors and agents, to use the Common Roads located on the Office Parcel (and as such roads may be dedicated in the future) for construction ingress, egress and regress during any period of construction on the Office Parcel. Additionally, the second grammatical sentence of Section 2.1 of the Master Agreement is hereby deleted in its entirety.

4. Budget. For the avoidance of doubt, the Budget shall be subject to the approval of a majority of the Parcel Owners; provided, however, in all cases such majority must include HTP and HT Fuel in order for the approval to be effective. Additionally, notwithstanding anything set forth in the Master Agreement, if a Parcel Owner fails to respond within thirty (30) days after receipt of a proposed Budget, such Parcel Owner shall be given an additional notice and five (5) additional business days to respond before such Parcel Owner shall be deemed to have accepted the Budget.

5. Liens. Any lien imposed under Section 4.5 of the Master Agreement shall be automatically subordinated to any lender’s lien on a Parcel.

6. Estoppel. Within fifteen (15) days after a written request therefor, Developer shall provide a customary estoppel with respect to the Master Agreement. Further, each Party hereby confirms that, as of the Effective Date, to its knowledge, no other Party is in violation of the Master Agreement.

7. Default. If any Party breaches any of its obligations under the Master Agreement, including as reflected by the Budget for the current period, and such breach continues for a period of thirty (30) days after such defaulting Party’s receipt of written notice of such breach from a majority of the other Parcel Owners, the impacted Party shall be entitled to cure such breach in addition to all remedies at law or in equity so long as such party furnishes prior notice

to the other Parties. Notwithstanding the foregoing, no notice is required should the breach create an emergency or interfere with the use of a Parcel. All expenses incurred by the curing Party, including to the extent reflected by the Budget for the current period, shall be reimbursed by the Developer within thirty (30) days after receipt of written evidence confirming the payment of such expenses incurred in connection with the uncured breach. Any sums remaining unpaid in accordance with the immediately preceding sentence shall accrue interest calculated at three percent (3%) above the prime rate published in The Wall Street Journal or any successor or equivalent national financial publication if The Wall Street Journal no longer is published, or at the highest annual interest rate allowed by law, whichever is less, and such base amount plus interest may be secured by a lien on the portion of the Project owned by the defaulting Party and may be perfected in accordance with the laws of the State of North Carolina, which lien shall retain the original priority of title of the Master Agreement.

8. Run With the Land. This Amendment shall run with the land and shall be binding on all parties having any rights, title or interest in the Property or any portion thereof, their heirs, successors and assigns and shall inure to the benefit of each Party thereof.

9. Definitions. All capitalized terms not defined herein shall have the meanings ascribed to them in the Master Agreement.

10. Counterpart Signature Pages. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

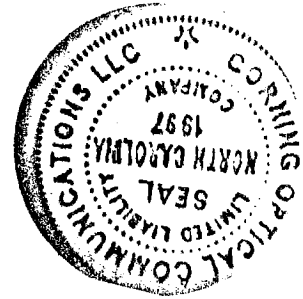
[SIGNATURE AND NOTARIAL ACKNOWLEDGMENT PAGES FOLLOW]

IN TESTIMONY WHEREOF, the Parties have caused this Amendment to be executed under seal as of the day and year first where written.

CORNING:

Corning Optical Communications LLC,
a North Carolina limited liability company

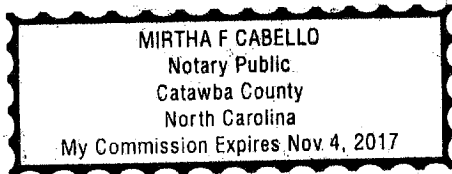
By: [Signature]
Name: Steven W. Morris
Title: Chief Compliance Officer and Secretary



STATE OF North Carolina
COUNTY OF Catawba

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Steven W. Morris, as Chief Compliance Officer and Secretary of Corning Optical Communications LLC

Date: October 25th, 2017



[Signature]
Mirtha F. Cabello, Notary Public
[Notary's printed or typed name]
My Commission Expires: Nov. 4th, 2017

[NOTARIAL SEAL]

HTP:

Harris Teeter Properties, LLC,
a North Carolina limited liability company

By: Scott L. Wipfel
Name: SCOTT L. WIPPEL
Title: PRESIDENT

STATE OF NORTH CAROLINA

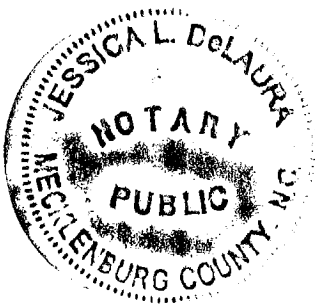
COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Scott L. Wipfel, as President of Harris Teeter Properties, LLC.

Date: October 13, 2017

Jessica L. DeLaura
Jessica L. DeLaura, Notary Public
[Notary's printed or typed name]
My Commission Expires: June 4, 2022

[NOTARIAL SEAL]



HT Fuel:

HT Fuel NC, LLC,
a North Carolina limited liability company

By: Harris Teeter Properties, LLC,
a North Carolina limited liability company,
its Manager

By: Scott L. Wipfel
Name: SCOTT L. WIPPEL
Title: PRESIDENT

STATE OF NORTH CAROLINA

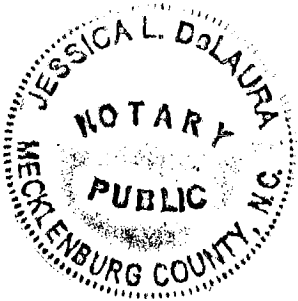
COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: Scott L. Wipfel, as President of Harris Teeter Properties, LLC, which is the Manager of HT Fuel NC, LLC.

Date: October 13, 2017

Jessica L. DeLaure
Jessica L. DeLaure, Notary Public
[Notary's printed or typed name]
My Commission Expires: June 4, 2022

[NOTARIAL SEAL]



DEVELOPER:

MT Island Promenade, LLC

a North Carolina limited liability company

By: Mt Island Partners, LLC,
a North Carolina limited liability company,
its Manager

By: *E. Samuel Simpson IV*
Name: *E. Samuel Simpson IV*
Title: *Manager*

STATE OF NORTH CAROLINA

COUNTY OF *Guilford*

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: *E. Samuel Simpson IV*, as *Manager* of Mt Island Partners, LLC, which is the Manager of MT Island Promenade, LLC.

Date: *October 12, 2017*

Kimberly Riddle
Kimberly Riddle, Notary Public
[Notary's printed or typed name]
My Commission Expires: *3/16/2020*

[NOTARIAL SEAL]

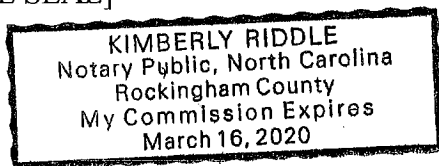
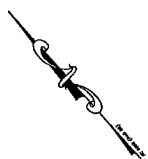
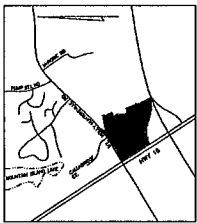
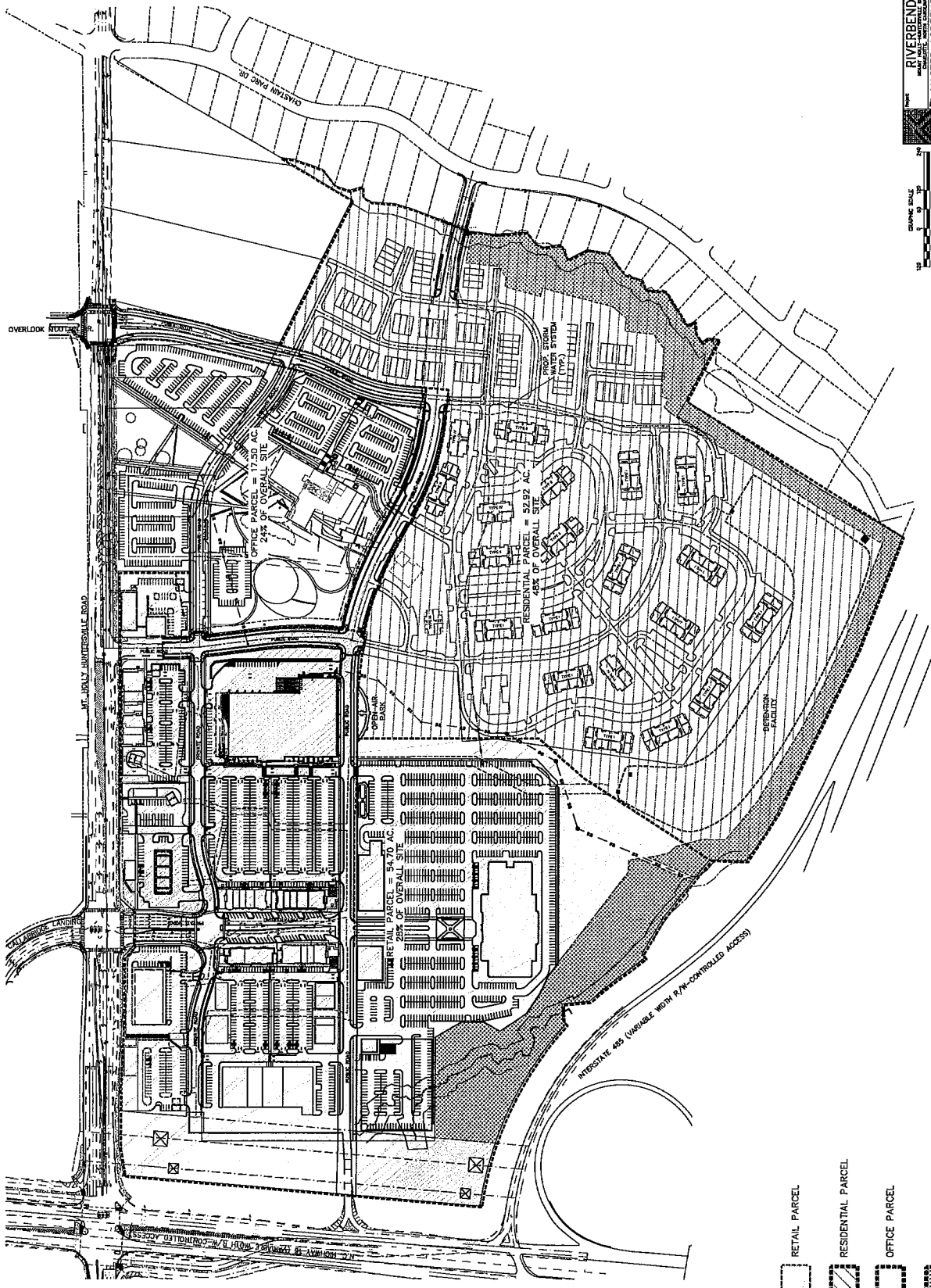
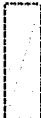





EXHIBIT B

[attached]

RIVERBEND MT. HOLLY—HUNTERSVILLE ROAD



- LEGEND:**
-  RETAIL PARCEL
 -  RESIDENTIAL PARCEL
 -  OFFICE PARCEL
 -  COMMON LANDSCAPE AREA

RIVERBEND
MASTER DEVELOPMENT
COMMON FACILITIES EXHIBIT B

JSAACS
 PROJECT NO. 2010-001
 DATE: 08/20/10
 SCALE: AS SHOWN
 DRAWN BY: JSAACS
 CHECKED BY: JSAACS
 PROJECT: RIVERBEND COMMON FACILITIES EXHIBIT B

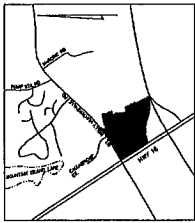
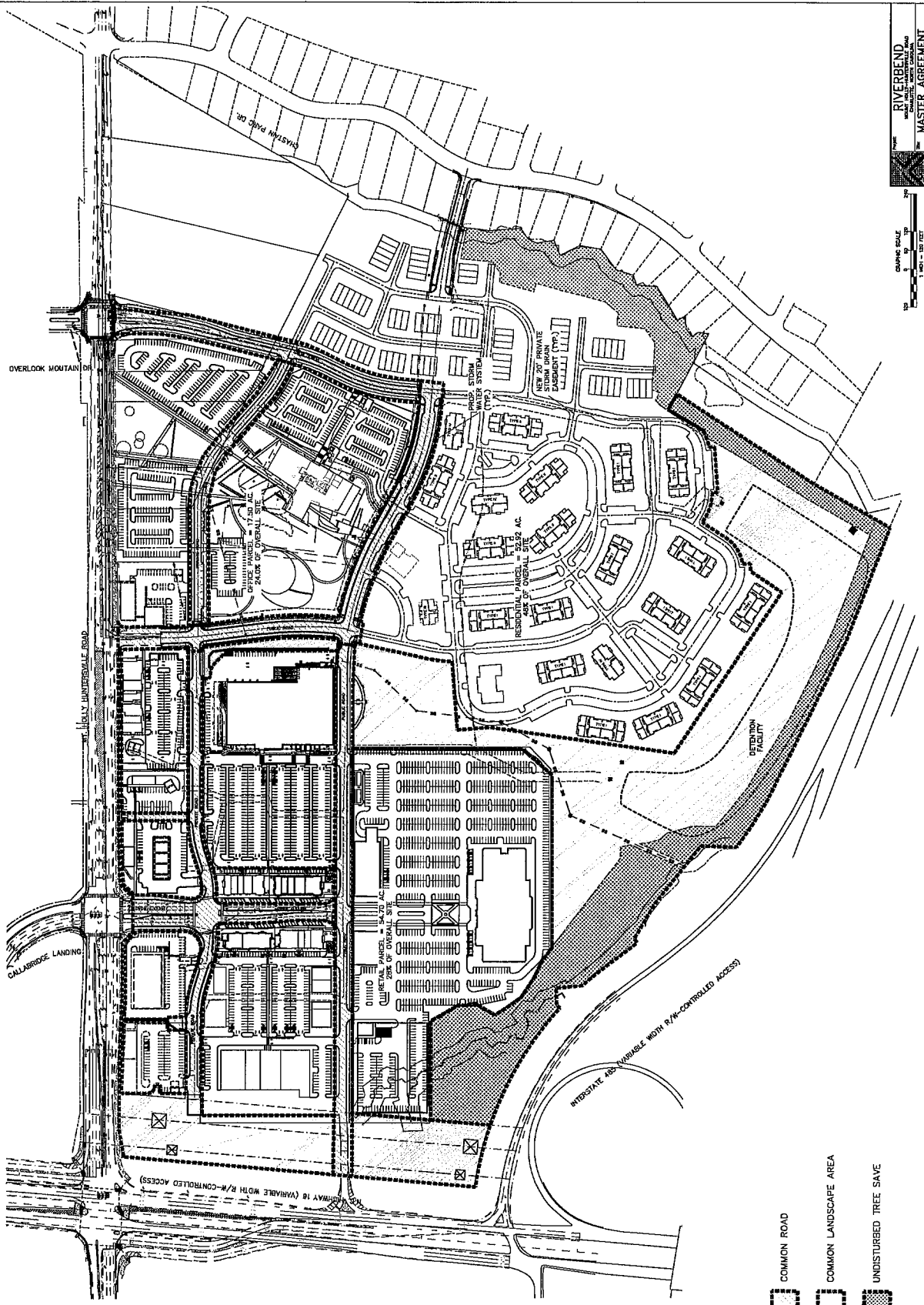
EX-B




PRELIMINARY
DO NOT USE FOR CONSTRUCTION

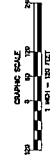
EXHIBIT C

[attached]

EXHIBIT C RIVERBEND MT. HOLLY—HUNTERSVILLE ROAD



- LEGEND:**
-  COMMON ROAD
 -  COMMON LANDSCAPE AREA
 -  UNDISTURBED TREE SAVE



NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY	10/15/03	JSA
2	FOR PERMITTING	11/10/03	JSA
3	FOR CONSTRUCTION	01/15/04	JSA
4	FOR RECORD	02/15/04	JSA

RIVERBEND
 10000 RIVERBEND DRIVE
 HUNTERSVILLE, NC 28041
COMMON FACILITIES EXHIBIT C

JSAACS
 10000 RIVERBEND DRIVE
 HUNTERSVILLE, NC 28041
 PHONE: 704.875.1234
 FAX: 704.875.1235
 WWW: WWW.JSAACS.COM

DATE: 10/15/03
 DRAWN BY: JSA
 CHECKED BY: JSA
 PROJECT NO.: 03-001

PRELIMINARY
DO NOT USE FOR CONSTRUCTION

JOINDER AND SUBORDINATION

Pinnacle Bank (successor to Bank of North Carolina), as Lender under that certain Deed of Trust recorded in Book 31143, Page 659, Mecklenburg County Register of Deeds (together with all other documents securing the subject loan, the "Deed of Trust"), for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby joins in the foregoing First Amendment to Master Agreement for Shared Facilities ("First Amendment") for the express purpose of subordinating the lien of the Deed of Trust to that certain Master Agreement for Shared Facilities recorded in Book 31142, Page 28, as amended by the subject First Amendment and as may be further amended from time to time. Except for said subordination, the Deed of Trust shall remain in full force and effect.

IN WITNESS WHEREOF, Pinnacle Bank has executed this Joinder and Subordination, or has caused it to be executed on its behalf by its duly authorized representatives, to be effective as of the date of the First Amendment.

Pinnacle Bank

By: Chase Allen
Name: Chase Allen
Title: SVP

North Carolina County, Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Chase Allen (name of signatory).

Date: October 19, 2017

Donna M. Carter
Official Signature of Notary

Donna M. Carter
Notary's printed or typed name, Notary Public
My commission expires: 10/1/2022

